

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)
)
) v. ID No. 0703031898
)
JOHN E. FOSTER,)
)
) Defendant.)

ORDER

On Defendant John E. Foster's
Third Motion for Postconviction Relief

**Commissioner's Report and Recommendation ACCEPTED.
February 28, 2012**

Steven P. Wood, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

John E. Foster, *Pro Se*

JOHNSTON, J.

1. Following a Superior Court jury trial, defendant was sentenced as an habitual offender to a total of 18 years at Level V. The mandatory portion of the sentence subsequently was reduced by one year on the grounds that defendant had provided substantial assistance in connection with an unrelated criminal prosecution. The Delaware Supreme Court affirmed the conviction on direct appeal.

2. Defendant filed his first Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 on February 18, 2009.

3. This Motion for Postconviction Relief was referred to a Superior Court Commissioner pursuant to 10 *Del. C.* §512(b) and Superior Court Criminal Rule 62 for proposed findings of fact and conclusions of law. The Commissioner issued the Report and Recommendation on October 1, 2009. The Commissioner recommended that defendant's motion for postconviction relief be denied.

4. Defendant filed an Appeal from Commissioner's Report and Recommendation.

5. On January 19, 2010, the Court denied Defendant's objections to the Commissioner's Report and Recommendation. After a review *de novo* the Court accepted the Commissioner's Report and Recommendation and denied defendant's Motion for Post Conviction Relief.

6. Defendant appealed the Superior Court's January 19, 2010 Order to the Delaware Supreme Court, which was affirmed.¹

7. Defendant filed a second Motion for Postconviction Relief on September 13, 2010, which was denied.²

8. Defendant filed his third Motion for Postconviction Relief on December 14, 2011.

9. This Motion for Postconviction Relief was referred to a Superior Court Commissioner pursuant to 10 *Del. C.* §512(b) and Superior Court Criminal Rule 62 for proposed findings of fact and conclusions of law. The Commissioner issued the Report and Recommendation on January 25, 2012. The Commissioner recommended that defendant's third Motion for Postconviction Relief be denied. Defendant did not file objections to the Commissioner's January 25, 2012 Report and Recommendation.

¹*State v. Foster*, 2010 WL 3002007 (Del.).

²*State v. Foster*, 2010 WL 5297162 (Del. Super.).

THEREFORE, the court hereby accepts the Report and Recommendation in its entirety. Defendant's third Motion for Postconviction Relief is hereby **DENIED**.

IT IS SO ORDERED.

/s/ Mary M. Johnston

The Honorable Mary M. Johnston